

Stewart, Michael, J.

From: Stewart, Michael, J.
Sent: Tuesday, April 26, 2022 7:16 PM
To: Kevin Gross
Cc: Eckart, Jillian; Lewis Zipkin
Subject: Re: Jackson v. Cuyahoga County

Thank you for your comments. I disagree with your characterization of your conversation. We will file our motion.

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From: Kevin Gross <kgross.zipkinwhiting@gmail.com>
Sent: Tuesday, April 26, 2022 6:51:59 PM
To: Stewart, Michael, J. <mjstewart@prosecutor.cuyahogacounty.us>
Cc: Eckart, Jillian <jeckart@prosecutor.cuyahogacounty.us>; Lewis Zipkin <lawsmatter2@gmail.com>
Subject: Re: Jackson v. Cuyahoga County

I proposed holding the Budish subpoena in abeyance if your client would identify another final policy maker whose acts represent official policy of the County, and agree to a stipulation to that effect. (Mr. Budish fits the bill, which is one reason why he was subpoenaed.) You were not interested in that proposal. Your only proposal when we conferred was that my clients simply withdraw the Budish subpoena. I told you no.

Further, you attempted to chastise me for serving Mr. Budish with a subpoena without your permission. He was subpoenaed after you refused to answer whether he would be produced voluntarily and whether you represent him. I subpoenaed him for late May because you said you were available. You have not indicated that you have a scheduling conflict for his deposition. As I said, if you do, please advise.

I also tried to discuss some of the paper discovery issues with you. However, when I did and brought up that we didn't get any documents regarding regionalization or pictures of the jail, you immediately became defensive and began talking over me. You said its been two months since we got the discovery responses, implying that we missed some sort of deadline to raise discovery deficiency issues. I advised that I've been dealing with a personal matter since mid February and have been working part time. Notwithstanding, you continued talking over me until I was able to inform you that it's time for the call to end.

As you stated earlier this week, I think it's best that Jillian be on any future calls; this should enable the parties to meaningfully confer about important discovery disputes.

—Kevin Gross, Esq.

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On Apr 26, 2022, at 3:48 PM, Stewart, Michael, J. <mjstewart@prosecutor.cuyahogacounty.us> wrote:

Good afternoon Kevin-

In follow up to our call: Since we were unable to reach an agreement on alternative discovery options and you were not willing to withdraw the subpoena to Budish while I explored your request to identify and produce another “final decision maker” for the purposes of your client’s *Monell* claim, we will be filing a motion with the Court. I am also working respond to your inquiry about the twelve individuals you identified below.

I also look forward to reviewing and responding to your forthcoming discovery dispute letter. In the meantime, please feel free to reach out if you desire to discuss further.

Michael J. Stewart
Assistant Prosecuting Attorney- Civil Division
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1200 Ontario Street, Courts Tower
Cleveland, Ohio 44113
(216) 443-6673
Email: mjstewart@prosecutor.cuyahogacounty.us

From: Kevin M. Gross <kgross.zipkinwhiting@gmail.com>
Sent: Tuesday, April 26, 2022 11:48 AM
To: Stewart, Michael, J. <mjstewart@prosecutor.cuyahogacounty.us>
Cc: Eckart, Jillian <jeckart@prosecutor.cuyahogacounty.us>; Lewis Zipkin <lawsmatter2@gmail.com>; Flo Goldkrantz <flogold.zipkinwhiting@gmail.com>
Subject: Re: Jackson v. Cuyahoga County

Yes.

—Kevin Gross, Esq.

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On Mon, Apr 25, 2022 at 8:27 PM Stewart, Michael, J. <mjstewart@prosecutor.cuyahogacounty.us> wrote:

I am in a mediation then. Can I call you at 3:30?

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From: Kevin Gross <kgross.zipkinwhiting@gmail.com>
Sent: Monday, April 25, 2022 8:12:19 PM
To: Stewart, Michael, J. <mjstewart@prosecutor.cuyahogacounty.us>
Cc: Eckart, Jillian <jeckart@prosecutor.cuyahogacounty.us>; Lewis Zipkin <lawsmatter2@gmail.com>; Flo Goldkrantz <flogold.zipkinwhiting@gmail.com>
Subject: Re: Jackson v. Cuyahoga County

Will you call me at 2:30 tomorrow or do you want me to call you at your 6673 number then?

—Kevin Gross, Esq.

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On Apr 25, 2022, at 11:16 AM, Stewart, Michael, J.
<mjstewart@prosecutor.cuyahogacounty.us> wrote:

Hi Kevin. I just tried to give you a call on this.

Let's plan to talk substantively on May 2 at 2pm about discovery.

A couple of issues that we need to address before.

1. Can you confirm that Budish deposition will not be going forward until we either reach an agreement or the Court resolves the issue?; and
2. I need to file a response to the motion to extend the deadlines by Thursday. Can I file something that says "the parties have agreed to confer and will submit a (hopefully) joint proposed schedule by the end of next week": May 6? We do not have an objection to some extension, but we would like to discuss getting things moving and what kind of extension is really necessary here. At minimum, we agree that the 30(b)(6) date of May 13 can be extended.

If you want to have a brief preliminary discussion about these issues, I will be at my desk this afternoon, say between 2 and 4. We can plan a more substantive discussion on the 2d.

Michael J. Stewart

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Email: mjstewart@prosecutor.cuyahogacounty.us

From: Kevin Gross <kgross.zipkinwhiting@gmail.com>

Sent: Monday, April 25, 2022 10:39 AM

To: Stewart, Michael, J. <mjstewart@prosecutor.cuyahogacounty.us>

Cc: Eckart, Jillian <jeckart@prosecutor.cuyahogacounty.us>; Lewis Zipkin <lawsmatter2@gmail.com>

Subject: Re: Jackson v. Cuyahoga County

Hi Mike. Unfortunately, I do not. I'll be in Florida taking care of some personal matters.

How do the afternoons of May 2, 3 or 4 look for you two? After 1pm will work for me.

—Kevin Gross, Esq.

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On Apr 25, 2022, at 8:59 AM, Stewart, Michael, J.
<mjstewart@prosecutor.cuyahogacounty.us> wrote:

Hi Kevin. Jillian should be on this call, but is out of town until Wednesday. Do you have availability on Wednesday, perhaps at 10am (preferred) or 2pm?

Michael J. Stewart

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Email: mjstewart@prosecutor.cuyahogacounty.us

From: Kevin M. Gross <kgross.zipkinwhiting@gmail.com>

Sent: Friday, April 22, 2022 5:34 PM

To: Stewart, Michael, J. <mjstewart@prosecutor.cuyahogacounty.us>

Cc: Eckart, Jillian <jeckart@prosecutor.cuyahogacounty.us>; Lewis Zipkin <lawsmatter2@gmail.com>

Subject: Re: Jackson v. Cuyahoga County

Yes, I think there's a lot to discuss, and I am available after 2:30 on Monday and Tuesday next week to talk. 216-502-1044. I'll send you a formal discovery deficiency letter, but we received no pictures of the jail in discovery. We also did not receive a single document regarding the regionalization plan and red-zoning policies. Nor did we receive any of the grievances filed by corrections officers and supervisors regarding the conditions in the jail.

If it would be easier for you, I can send public records requests directly to the County to obtain this information.

As to Mr. Budish, he oversees the entire operation of the jail and its policies and procedures. This is a Monell action, and his testimony is critical, especially with respect to his decision - as the official with final policy-making authority - to carry out the regionalization plan, an official policy adopted and promulgated by the County. In the event that we cannot reach an agreement as to him, I think it's good that we know that upfront and early so we can have ample time to address it with the Court.

I appreciate your invitation for a witness list. Please advise as to the scheduling availability of the following persons for deposition (also advise who you represent, please):

Ken Mills

Ken Kochevar

Maggie Keenan

Brian Williams

Charles Enoch

Gary Brack

Sicily Woods

Earl Leiken

Eliza Wing

Brandy Carney

Clifford Pinkney

Eric Ivey

Once we get underway and begin taking testimony, all of these depositions may or may not be necessary, but these are the persons of interest at this time. There may be other persons of interest, and I will advise you of that if and when it happens. Enjoy the weather this weekend.

—Kevin Gross, Esq.

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On Fri, Apr 22, 2022 at 3:02 PM Stewart, Michael, J.
<mjstewart@prosecutor.cuyahogacounty.us> wrote:

Good afternoon Kevin-

We obviously have a different view of the appropriateness of this deposition at this stage and we will be bringing the this issue to the Court. In light of the email chain below, am I correct in understanding the Plaintiffs do not desire to discuss making progress elsewhere before dealing with your request for Armond Budish? If this is an issue that you believe that the Court needs to decide, I understand. But we both have meet-and-confer obligations before bringing discovery disputes to the Court. I want to be sure that we are at that point before the motion practice starts.

If you would like to discuss this, please propose a couple of times early next week for a call.

Best,

Michael J. Stewart

Assistant Prosecuting Attorney- Civil Division

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Email: mjstewart@prosecutor.cuyahogacounty.us

From: Kevin M. Gross <kgross.zipkinwhiting@gmail.com>
Sent: Thursday, April 21, 2022 5:15 PM
To: Stewart, Michael, J. <mjstewart@prosecutor.cuyahogacounty.us>
Cc: Eckart, Jillian <jeckart@prosecutor.cuyahogacounty.us>; Lewis Zipkin <lawsmatter2@gmail.com>
Subject: Re: Jackson v. Cuyahoga County

For starters, he has knowledge of the regionalization plan and he was the one who requested that the U.S. Marshals Service come in and assess the conditions in the jail. I served him with a deposition subpoena for late May (May 19 at 11am). In the event that there are scheduling conflicts, please advise and we can move the date/time, if necessary.

Sincerely,

Kevin M. Gross, Esq.

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On Thu, Apr 21, 2022 at 4:40 PM Stewart, Michael, J.
<mjstewart@prosecutor.cuyahogacounty.us> wrote:

Our office generally represents Mr. Budish in his official capacity. So you can communicate with me regarding this issue.

As I indicated in my initial response, we would like to understand what unique personal knowledge that you believe that Mr. Budish has

regarding the particular claims at issue here. And why your client is pursuing this deposition at this stage. Depositions of high-ranking government officials such as Mr. Budish are disfavored absent extraordinary circumstances. See *Morgan v. United States*, 313 U.S. 419, 421-422 (1941) and its progeny like *Overall v. Oakland Cty.*, E.D. Mich No. 20-12861, 2022 U.S. Dist. LEXIS 21031.

Please review. We would ultimately consider producing Mr. Budish if your clients can meet their burdens of articulating a particular need for his testimony and have explored less intrusive alternatives.

As I initially suggested, the best course to avoid a premature discovery dispute is to make progress elsewhere in this case. There is a lot to do.

Please advise.

Michael J. Stewart

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Email: mjstewart@prosecutor.cuyahogacounty.us

From: Kevin Gross <kgross.zipkinwhiting@gmail.com>

Sent: Thursday, April 21, 2022 3:58 PM

To: Stewart, Michael, J.

<mjstewart@prosecutor.cuyahogacounty.us>

Cc: Eckart, Jillian <jeckart@prosecutor.cuyahogacounty.us>; Lewis Zipkin <lawsmatter2@gmail.com>

Subject: Re: Jackson v. Cuyahoga County

Thanks. Do you represent Mr. Budish?

—Kevin Gross, Esq.

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On Apr 21, 2022, at 3:51 PM, Stewart, Michael, J.
<mjstewart@prosecutor.cuyahogacounty.us> wrote:

We have fairly good availability in late May and early June, but would need to clear with the witnesses as well. Do you have a list and we can start the process of lining these up?

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From: Kevin M. Gross
<kgross.zipkinwhiting@gmail.com>
Sent: Thursday, April 21, 2022 3:34:50 PM
To: Stewart, Michael, J.
<mjstewart@prosecutor.cuyahogacounty.us>
Cc: Eckart, Jillian
<jeckart@prosecutor.cuyahogacounty.us>; Lewis
Zipkin <lawsmatter2@gmail.com>
Subject: Re: Jackson v. Cuyahoga County

Thanks for the email. Please send me dates in which you have availability to defend depositions.

Sincerely,

Kevin M. Gross, Esq.

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On Thu, Apr 21, 2022 at 2:41 PM Stewart, Michael, J.
<mjstewart@prosecutor.cuyahogacounty.us> wrote:

Good afternoon Kevin-

We are somewhat confused as to why Plaintiffs are requesting Mr. Budish's deposition at this stage. Could you shed some light on the issues about which you believe Mr. Budish has unique personal knowledge? I do not believe that there is any allegation here that he knows anything about Ms. Davis's or Ms. Jackson's circumstances.

We will be happy to work with you to identify less intrusive and burdensome means of discovery before deal with this request.

Please advise.

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-----Original Message-----

From: Kevin Gross
<kgross.zipkinwhiting@gmail.com>
Sent: Wednesday, April 20, 2022 4:00 AM
To: Stewart, Michael, J.
<mjstewart@prosecutor.cuyahogacounty.us>;
Eckart, Jillian
<jeckart@prosecutor.cuyahogacounty.us>
Cc: Lewis Zipkin <lawsmatter2@gmail.com>
Subject: Jackson v. Cuyahoga County

I'd like to begin by taking Armond Budish's deposition. Will he be produced for deposition voluntarily by the county? Please advise. Thanks.

Sincerely,

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